

sca427097j

.FO 2

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4270 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====
=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

 2. To be referred to the Reporter or not? Yes.

2. To be referred to the Reporter or not?

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
Yes.

HARSHADKUMAR BHAGWATIPRASAD TRIVEDI

Versus

CHOTILA GRAM PANCHAYAT

Appearance:

MR NR SHAHANI for Petitioner

MR PJ PATEL for Respondent No. 1

Mr.V.B.Gerania, AGP for Respondent No. 2

MR SP HASURKAR for Respondent No. 3

CORAM : MR. JUSTICE S. D. PANDIT

Date of decision: 03/08/98

ORAL JUDGEMENT

This petition is filed by Harshadkumar Bhawatiprasad Trivedi seeking the implementation and execution of the award passed by the Labour Court, Surandranagar in Reference No. 341 of 1992.

2. The petitioner Harshadkumar joined the services of the respondent Gram Panchayat as a clerk in March 1991. His services were terminated on 7.12.1992 and therefore, he raised an industrial dispute which resulted in making Reference No.341 of 1992. When the said Reference No.341 of 1992 was before the Labour Court, Surendranagar, said referenced and many other references were referred to Lok Adalat held on 21.9.96. In the said Lok Adalat, a settlement took place between the parties. Said settlement was signed by the workman as well as by one Dhirubha describing himself as Sarpanch and he had also produced Resolution No. 50 dated 18.9.93 along with the said settlement in order to show that he was authorised to enter into said settlement. The Panel of Lok Adalat has also signed said settlement and learned advocates for both the sides also signed the same. Then the Presiding Officer of the Labour Court passed an award in terms of the said settlement on 21.9.96.

3. By the said settlement, present petitioner was to be reinstated with continuity of service but he was not to get any back wages. He accordingly joined the service but he was not permitted to join the duties after passing of the said award. The award was published on 12.2.97. After passing of the award, he again attempted to join his services but he was not permitted to join duties. On the contrary he was informed that the Gram Panchayat was withdrawing said settlement as according to the Gram Panchayat, said settlement was illegal. Said settlement was signed by Dy. Sarpanch and not by Sarpanch and he had had no authority to sign the same and thus the petitioner was denied the fruits of the said award. Thereafter the petitioner had initiated proceedings under section 29 of the Industrial Disputes Act and he also filed this petition. Similarly he had also initiated another proceedings to challenge the action of the respondents to withdraw the said settlement. The action taken by the petitioner to withdraw the settlement has been referred by the Government to the Industrial Court to consider the same and reference regarding action of the respondents for withdrawing the said settlement is pending before the Labour Court.

4. The respondent Gram Panchayat has contested the claim of the petitioner. It is contended by the

respondent Gram Panchayat that Dy. Sarpanch has signed the said settlement describing himself as Sarpanch and consequently said settlement is illegal and invalid. It is further contended that said settlement was entered into by joining hands with the workman and the same was a fraudulent settlement. There was also objection raised by the Taluka Development Officer regarding validity of the said settlement and therefore, in the circumstances the respondent Gram Panchayat was entitled to withdraw said settlement and not to act on the said settlement. It is further contended on behalf of the respondent that as the petitioner has already approached the Labour Court regarding action of the respondent regarding withdrawal of the settlement, he should be directed to pursue said remedy and the petition should not be entertained.

5. There is no dispute of the fact that after termination of the present petitioner, the petitioner workman had raised an industrial dispute and it had resulted into Reference No. 341 of 1992. It is also admitted fact that said Reference was referred to the Lok Adalat held on 21.9.96 and in the said Lok Adalat a settlement has taken place. Certified copy of the said settlement produced on record shows that said settlement is signed on behalf of the respondent Panchayat by describing the signatory as Sarpanch of the Gram Panchayat. It also shows that said settlement is also signed by the advocate for the respondent Gram Panchayat. It is also signed by the petitioner and his advocate. Not only that said settlement is signed by the advocate of the Panchayat but along with the said settlement, the Resolution of the Gram Panchayat was produced showing that there was a Resolution of the Gram Panchayat to have the settlement accordingly. The record further shows that said settlement was accepted and acted upon by the Labour Court and it had merged into an award of the Labour Court. Now, once the settlement has merged into an award, it ceases to be a settlement. When it has merged into an award of the Labour Court or order of the Labour Court, the party to the settlement can only challenge the award of the Labour Court or Tribunal in Higher forum but it is not open for the parties to suo motu withdraw from the said settlement.

6. Now apart from this, if the provisions of section 19 of the Industrial Disputes Act are taken into consideration, then it would be quite clear that even in cases of settlement, if a party to the settlement wants to withdraw from the settlement, in view of section 19 of the ID Act, said settlement will remain enforceable till

new settlement is arrived at between the parties. One of the parties to the said settlement which has been arrived at during the proceedings before the Labour Court or Industrial Tribunal and that the same was filed before the Court and the court has recorded the same, one of the parties to the said settlement cannot alone withdraw from the said settlement.

7. The claim of the respondent is that Deputy Sarpanch was not authorised to sign as Sarpanch for the said settlement. But when Gram Panchayat was a party to the said proceedings and when the Panchayat and their advocate had putforward before the Labour Court, by saying that it was executed by Gram Panchayat, by saying that it was executed by the Gram Panchayat then acting on the said settlement by the Court could not be said to be illegal or invalid. Admittedly, no proceedings are initiated by the respondent Gram Panchayat either against said Upsarpanch or to get a declaration that said award was obtained by fraud or misrepresentation. Learned advocate for the respondents no.1 Mr. Patel states that the Gram Panchayat is going to take proceedings before the civil court for such a declaration. But I have to state the things as they stand today. Therefore, in view of the above said circumstances it is not open for the respondent Gram Panchayat not to implement and execute the award passed by the Labour Court and they will have to implement the award of the Labour Court. The petitioner workman has already, as per the settlement, given up his claim for back wages from January 1993 till September 1996. The attitude of the respondent Gram Panchayat in not implementing the said award is not at all justified.

8. Learned advocate for the respondent no.1 urged before me that present petition should not be entertained as the petitioner has already approached the Industrial Court regarding action of the respondent Gram Panchayat for withdrawal of the said settlement. It is true that the petitioner has raised an industrial dispute regarding the action of the respondent Panchayat for withdrawing said settlement but merely because he has taken that action, it could not be said that present petition is not tenable. The action taken by the petitioner in raising said industrial dispute and seeking a reference may be by way of precautionary measure. The issue which is involved in the said reference is quite different and distinct from the present SCA. Here I am considering the question as to whether the award in question is to be implemented and executed and the issue which is involved in the said reference is as to whether one of the parties

to the said settlement is entitled to withdraw the said settlement or not. Therefore, in the circumstances I am unable to hold that because of the said action of the petitioner, present petition could not be entertained.

9. Thus the petition is allowed. The respondent no.1 Gram Panchayat is directed to reinstate the present petitioner within 3 months from today and to pay back wages from the date of the publication of the award till the date of reinstatement within six weeks from the date of reinstatement. Rule is made absolute accordingly. Parties are directed to bear their own costs. Direct service.

(S.D.Pandit.J)